

### **REMARKS**

The pending Office Action addresses claims 1-73 with claims 25-31, 33, 41, 42, and 44-73 having been withdrawn from consideration by the Examiner. Claim 24 is objected to, and claims 1-23, 32, 34-40, and 43 stand rejected. Reconsideration and allowance are respectfully requested in view of the amendments and remarks submitted herewith.

#### ***Election/Restriction Requirement***

In response to Applicants' election of claims filed on December 22, 2005, the Examiner states that the election has been treated as an election without traverse "because Applicant[s] did not distinctly and specifically point out the supposed errors in the restriction requirement." This is incorrect. In the election of claims, Applicants stated that the election was made with traverse and distinctly and specifically pointed out grouping errors in the species requirements. In particular, Applicants noted that Species B, Figure 5B, which is drawn to a guide member with conjoined bores, also includes Figures 5A, 5C, and 5D in addition to Figure 5B. Applicants further noted that Species A, Figure 3, which is drawn to a stationary elongate shaft, also includes Figures 1, 2A, 2B, and 5A in addition to Figure 3. The election was thus clearly made with traverse, and consideration of the following remarks is respectfully requested.

In the present Office Action, the Examiner erroneously withdraws claims 65-73 from consideration. In the election of claims filed on December 22, 2005, Applicants withdrew only claims 44-54 and 61-64 as being directed to the non-elected group, and claims 22-31, 33, 41-42, and 55-60 as being directed to the non-elected species. Applicants never withdrew claims 65-73 from consideration. Rather, claims 65-73 are included in the elected group (Group I, a spinal guide device) and they read on the elected species (Species B, Figures 5A-5D, the guide member with conjoined bores and Species A, Figures 1, 2A, 2B, 3, and 5A, the stationary elongate shaft). See, for example, Figures 5A-5D which illustrate a guide device having an elongate shaft and a guide member coupled to the elongate shaft and having first and second pathways that are at least partially in communication with one another, as required by claim 65, and that include C-shaped lateral sidewalls, as required by claim 73. Accordingly, claims 65-73 should not be withdrawn from consideration and examination of the claims is respectfully requested.

### ***Objections to the Drawings***

The Examiner objects to the drawings pursuant to 37 C.F.R. §1.83(a), arguing that the drawings fail to show “the at least one tab comprising first and second tabs of claim 5.” Applicants disagree with the Examiner’s objection. By way of non-limiting example, Figures 1 and 2A-2B illustrate first and second tabs 24, 26 and Figures 5A-5C illustrate first and second tabs 524, 526. Accordingly, because the features of claim 5 are shown in the drawings, Applicants request withdrawal of this objection.

### ***Amendments to the Claims***

Applicants amend claims 1 and 35 to include the limitations of claims 20 and 43, respectively, which are now cancelled. Applicants also amend claims 1, 35, and 65 to clarify that the distal end of the elongate member is offset from the first and second pathways. Support for this recitation can be found throughout the specification, at least at paragraph [0036] of the published application. Applicants amend claims 6 and 7 to provide proper antecedent basis for the recitation of the “first and second tabs,” as per the Examiner’s suggestion. Claims 24, 34, and 73 are amended to correct minor typographical errors, and claims 39 and 40 are amended to correspond to amended claim 35.

Applicants cancel claims 25-26, 41-42, and 44-64, as these claims are withdrawn from consideration. Applicants reserve the right to pursue these claims in a divisional application.

Applicants add new claim 74, which includes the limitations of claims 1, 21, 22, and 24. The Examiner indicated that claim 24 represents allowable subject matter, and new claim 74 is allowable.

No new matter is added.

Claims 1-19, 21-24, 27-40, and 65-74 are now pending.

### ***Rejections of the Claims Pursuant to 35 U.S.C. §112***

The Examiner rejects claims 6 and 7 pursuant to 35 U.S.C. §112, second paragraph, arguing that there is insufficient antecedent basis for the recitation of the “first and second opposed tabs.” As indicated above, Applicants amend claims 6 and 7 to recite that “the at least one tab comprises first and second opposed alignment tabs...,” thereby obviating the basis for this rejection.

***Rejections Pursuant to 35 U.S.C. §102***

*U.S. Patent No. 2,466,023 of Griffin*

The Examiner rejects claims 1, 2, 9-12, 13, 17-19, 21, 22, 32, and 35 pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,466,023 of Griffin. Applicants have amended claims 1 and 35 to include the limitations of claims 20 and 43, which were not included in this rejection, thereby obviating the basis for the Examiner's rejection. Accordingly, claims 1 and 35, as well as claims 2, 9-12, 13, 17-19, 21, 22, and 32 which depend therefrom, distinguish over Griffin.

*U.S. Patent No. 4,686,972 of Kurland*

The Examiner rejects claims 35-38 pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,686,972 of Kurland. Applicants have amended claim 35 to include the limitations of claim 43, which was not included in this rejection, thereby obviating the basis for the Examiner's rejection. Accordingly, claim 35, as well as claims 36-38 which depend therefrom, distinguish over Kurland.

*U.S. Patent No. 5,676,666 of Oxland*

The Examiner rejects claims 1-4, 7, 8, 12, 13, 16, 21-23, 34-38, and 40 pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,676,666 of Oxland. Applicants have amended claims 1 and 35 to include the limitations of claims 20 and 43, which were not included in this rejection, thereby obviating the basis for the Examiner's rejection. Accordingly, claims 1 and 35, as well as claims 2-4, 7, 8, 12, 13, 16, 21-23, 34, 36-38, and 40 which depend therefrom, distinguish over Oxland.

*U.S. Publication No. 2002/0022847 of Ray*

The Examiner rejects claims 1-4, 7-23, 32, 34-38, 40, and 43 pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Publication No. 2002/0022847 of Ray. Applicants disagree with the Examiner's rejection.

Independent claims 1 and 35 recite a device having an elongate shaft with a distal end that is coupled to a guide member at a location offset from first and second pathways formed in the guide member. Ray does not teach or even suggest such a device. Ray teaches a device that includes a

housing that is adapted to receive a distal end of a guide sleeve having first and second working channel ports that extend therethrough. As shown in Figure 38 of Ray, the guide sleeve is an elongate member having working channels formed therein that extend from the proximal to the distal end thereof. In use, a distal end of the guide sleeve is engaged to a guide sleeve housing such that a first working channel in the guide sleeve housing is aligned with a first working channel port and a second working channel is aligned with a second working channel port in the guide sleeve housing. Since the working channels of the guide sleeve and the working ports of the housing are aligned with one another, the guide sleeve does not have a distal end that is offset from the first and second working channel ports. Ray therefore does not teach an elongate shaft having a distal end that is offset from first and second pathways formed in a guide member, as required by claims 1 and 35. Accordingly, claims 1 and 35, as well as claims 2-4, 7-19, 21-23, 32, 34, 36-38, and 40 which depend therefrom, therefore distinguish over Ray.

*U.S. Patent No. 6,565,571 of Jackowski*

The Examiner rejects claims 1, 2, 6, 35, 36, and 39 pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,565,571 of Jackowski. Applicants have amended claims 1 and 35 to include the limitations of claims 20 and 43, which were not included in this rejection, thereby obviating the basis for the Examiner's rejection. Accordingly, claims 1 and 35, as well as claims 2, 6, 36, and 39 which depend therefrom, distinguish over Jackowski.

***Rejections Pursuant to 35 U.S.C. §103***

*Griffin and Jackowski*

The Examiner rejects claims 1, 2, 6, 35, 36, and 39 pursuant to 35 U.S.C. §103(a) as being obvious over Griffin in view of Jackowski. As discussed above, independent claims 1 and 35 distinguish over both Griffin and Jackowski, and therefore the combination of references does not teach the claimed invention.

*Oxland and U.S. Patent No. 6,511,484 of Torode*

The Examiner rejects claims 1, 2, and 5 pursuant to 35 U.S.C. §103(a) as being obvious over Oxland in view of U.S. Patent No. 6,511,484 of Torode. As discussed above, independent claim 1 distinguishes over Oxland because Oxland does not teach or even suggest a guide member having

first and second pathways that are at least partially in communication with one another. Torode does not remedy the deficiencies of Oxland because Torode likewise fails to teach or even suggest a guide member having first and second pathways that are at least partially in communication with one another. Claim 1, as well as claims 2 and 5 which depend therefrom, therefore distinguish over Oxland in view of Torode.


### ***Claims 65-73***

As discussed above, claims 65-73 should not be withdrawn from consideration because these claims read on the elected species. While the Examiner did not address these claims, Applicants note that these claims likewise distinguish over the cited art and represent allowable subject matter.

### ***Conclusion***

Applicants submit that all pending claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants is such communication is deemed to expedite the prosecution of this application.

Respectfully submitted,



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Date: May 11, 2006

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